

E-Filing Policy Issue - # 17

Format of Outgoing Court Documents

Issue: (State the issue and whether it is specific to a certain level of court or case type.)

Technical Advisory Council recently approved two formats for incoming XML documents but separated them from those for outgoing XML documents. The Council's concern leading to the separation was that business requirements mandate that any document being distributed by the court must be protected from modification by the recipient. Is TAC's suspicion correct or is the outgoing electronic document merely a "convenience copy" necessitating any recipient desiring an "official copy" to visit the clerk's office or obtain the official electronic record through a separate process dictated by the clerk?

Discussion: (Provide the factual setting or context for the issue.)

ACJA 1-506 (D) (2) (b), approved in 2001, specified that XML documents would be accepted at some point in the future after the Supreme Court adopts standards for use of XML. Clerks asked the AOC about these formats after the AJACS case management system began issuing minute entries in Word 2007 format. The issue was referred to TAC for study. After much discussion, TAC recommended Open Document Format and Open Office XML format, but only for documents being filed into the court. Members would not approve any editable format, which XML fundamentally is, for use to distribute documents outside the court. They leaned toward requiring the less-editable PDF or TIF formats for those documents. One TAC representative even disapproved of allowing an editable format for accepted documents within the clerk's office, feeling that a careless mistake could too easily modify the official court record maintained by the clerk. That office currently converts every electronic document it receives to PDF format before acceptance and filing.

Not only is absolute protection of the format and content of an electronic document a practical impossibility, short of adopting Public Key Infrastructure (PKI) branchwide, enormous cost implications accompany a policy of distributing tamper-proof electronic records from the court. Even PDF, the current standby for protecting documents and specified by ACJA 1-506 (D) (2) (b), can be opened, changed, and resaved under the same filename using Adobe Professional Version 8.0 or later. Adobe has promised to move to an XML format in the future. The TIF format used by scanners that digitize paper, while not character based, can still be edited with a raster program and its appearance thereby changed. Placing trust in a particular document format rather than the protection of the electronic document management system is naive.

Some maintain that the clerks' important point about protection of the official record applies only to storage on the local system. In that paradigm, documents leaving the court are for reference use only, not the official record, and simply need to be disclaimed as such. Others argue that Internet users anticipate receiving official records and that PDF appears in ACJA 1-506 (D) (2) (a) precisely to meet the requirement for locking the document format of the official record. But, if PDF output is normative and intended for all documents by the approvers of 1-

506, why does Rule 124 (f) require paragraph numbering in electronic documents, including those sent from the court? No need exists to number paragraphs when page content is fixed.

The argument for distributing editable documents is that the bandwidth and storage requirements are much reduced by the decreased file size and the clerk is not required to subject documents to an additional process step – since no document is constructed in PDF or TIF natively – that necessitates additional work. The argument against distributing editable documents is that it greatly increases the risk that a recipient could modify the document and present it as an official record of the court. The AOC E-filing team and AJACS team need policy guidance regarding the format(s) allowed for documents being distributed from the court.

Authorities: (Provide references to specific statutes, rules, codes or administrative orders you believe are pertinent to the issue.)

This issue relates in largest measure to ACJA 1-506 (D) and its preamble. Rule 124, establishing e-filing, has been brought into the discussion as a reference in the argument against “locking” the format of outbound text-based documents based on its requirement that all electronic documents contain numbered paragraphs.

Alternative Solutions: (List all identified alternative solutions for the issue.)

- Require a public key/private key infrastructure throughout Arizona courts with key escrowing to provide the ultimate assurance of document integrity, sender authentication, and non-repudiation for every court record being distributed.
- Use OnBase Digital Signing Server to provide a lesser level of document protection still involving creation of a hash value for every document stored by clerks that could be used for later comparison with documents being presented as authoritative to ascertain whether tampering had occurred.
- Specify that converting a document to PDF provides acceptable protection of the format and content for its distribution outside the court.
- Allow XML formats as long as they are accompanied by a disclaimer that the documents being distributed are for reference purposes only and that official records must be obtained directly from the applicable clerk of court, by whatever means the clerk specifies.
- Allow the same XML formats for distribution as for incoming documents and require no accompanying disclaimer.

Position/Recommendation: (Does the AOC E-filing team have a recommendation on this issue?)

The e-filing team is very sensitive to the added steps in preparation of outgoing documents, the cost of products needed, the redundant electronic versions that must be stored, and the increased bandwidth required to actually distribute each document. Absent a firm requirement that document formats must be locked, XML output makes the most sense.

Decision:

The document presented at the public access website is only a convenience copy to be used for reference purposes. The concern regarding outgoing documents being editable will be addressed by requiring electronic court documents presented to have an accompanying disclaimer that the official record resides with the court or at the clerk's office.